Cassie Springer Ayeni
SB# 221506
Email: cassie@benefitslaw.com
Claire Kennedy-Wilkins
SB# 231897
Email: claire@benefitslaw.com
SPRINGER AYENI,
A Professional Law Corporation
1901 Harrison St., Suite 1100
Oakland, CA 94612
Telephone: 510.926.6768
Facsimile: 1.510.926.6768

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

MICHELE DECAMP,

Plaintiff,

vs.

LIFE INSURANCE COMPANY OF NORTH AMERICA,

Defendant,

Case No. 3:17-cv-1934

COMPLAINT (ERISA)

JURISDICTION AND VENUE

1. Plaintiff Michele DeCamp brings this action for declaratory, injunctive, and monetary relief pursuant to §§ 502(a)(1)(B) and 502(g) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1132(a)(1)(B); 1132(a)(g). This Court has subject matter jurisdiction over Plaintiff's claim under 29 U.S.C. § 1132(e), (f), (g), as it involves a claim by Plaintiff for disability benefits under an employee benefit plan regulated and

governed under ERISA. Jurisdiction is predicated under these code sections as well as 28 U.S.C. §1331 as this action involves a federal question.

2. At all relevant times, Plaintiff Michele DeCamp ("Ms. DeCamp" or "Plaintiff") was a participant, as defined by 29 U.S.C. § 1002(7) in the long-term disability plan ("the Plan") sponsored by Umpqua Bank, formerly Golf Savings Bank and Sterling Savings Bank, and insured and administered by defendant Life Insurance Company of North America ("CIGNA," "LINA" or "Defendant").

3. Umpqua Bank has locations in the states of California, Oregon, Washington, and Nevada, including three in San Francisco, one in Walnut Creek, one in Concord, two in Corte Madera, and one in San Rafael. The 450 Sansome St. San Francisco location is an Umpqua Bank Flagship location.

4. Plaintiff is informed and believes that Defendant CIGNA is, and at all times herein mentioned has been, licensed to do business in California.

5. Venue is proper under 29 USC § 1132 (e)(2) because Defendant may be found in this District and the Plan is offered in this district.

INTRADISTRICT ASSIGNMENT

6. The San Francisco Division of this judicial district is the appropriately assigned division, as Defendant may be found in this division.

FACTS

7. Plaintiff Michele DeCamp is a previously active 36-year-old female who resides with her husband in Shoreline, Washington. Ms. DeCamp is a high school graduate who holds two associates degrees, in accounting and business.

8. Ms. DeCamp started working for Golf Savings Bank in 2001.

9. Golf Savings Bank subsequently became Sterling Savings Bank, which in turn became Umpqua Bank ("the Bank").

10. In her last position at the Bank, Ms. DeCamp served as an Accounting Manager. As an Accounting Manager, Ms. DeCamp was responsible for managing a team of seven individuals, as well as for coordinating with multiple mortgage and operations departments, reviewing and finalizing the mortgage branch profit and loss statements for all branches, and handling loan-in-process accounting, general ledger reconciliations, and loan servicing accounting.

11. Ms. DeCamp's position as Accounting Manager was a sedentary job.

12. Ms. DeCamp maintained an active life outside of work. She exercised regularly, including swimming, doing aerobics, using an elliptical, and weight lifting. She and her husband frequently cooked and hosted social events at their house for friends and family. Ms. DeCamp also enjoyed traveling, typically taking two to three longer vacations each year, and as many as six weekend getaways.

13. In January 2009, Ms. DeCamp experienced a sudden onset of severe abdominal pain that caused her to go to the emergency room. She was initially diagnosed with a burst cyst, but the pain did not go away. On April 22, 2009, she underwent laparoscopic surgery, during which endometriosis tissue was found and ablated.

14. Ms. DeCamp's pain persisted after the surgery and her ability to perform her activities of daily living declined. The Bank attempted to accommodate Ms. DeCamp by allowing her to work exclusively from home starting on July 6, 2010. During this time, Ms. DeCamp sought frequent medical treatment from a variety of providers.

15. On October 16, 2010, Ms. DeCamp was forced to cease working due to her abdominal pain and related impairments.

16. At the Bank, Plaintiff participated in the company's ERISA benefit plans, including the long-term disability ("LTD") plan.

17. Prior to her present disability, Ms. DeCamp's gross monthly earnings were $6,630. Under the Plan, her LTD benefit equals $3,978, or 60% of her pre-disability earnings, subject to certain offsets.

18. In December 2010, Ms. DeCamp submitted an application for LTD benefits under the terms of the Plan.

19. On February 7, 2011, CIGNA denied Ms. DeCamp's claim on the grounds that her medical records and reported pain levels did not indicate a significant impact on her functionality and thus she did not meet the Plan's definition of disability.

20. Ms. DeCamp appealed the February 7, 2011 decision by letter dated July 31, 2011.

21. On December 9, 2011, CIGNA reversed its decision and began paying Ms. DeCamp LTD benefits under the Plan, effective January 14, 2011 (90 days after Ms. DeCamp's last day of work, in satisfaction of the Plan's Elimination Period).

22. Ms. DeCamp applied for and received Social Security Disability benefits based on a disability date of October 2010, and with an effective date of April 2011.

23. In November 2011, CIGNA submitted Ms. DeCamp's medical records to Dr. Robert Burr for an independent peer review. Dr. Burr determined that "this claimant has a well-documented and appropriately evaluated and treated abdominal cutaneous nerve entrapment syndrome" and stated that no prognosis for return to work could currently be provided.

24. In July 2012, CIGNA sent Ms. DeCamp for an independent medical evaluation

("IME") with Dr. John Nimlos. Dr. Nimlos noted that although Ms. DeCamp's job was "quite sedentary, the process of simply sitting in one place and using the abdominal muscles as she would normally sit and turn, as well as standing as needed to change positions or walk to meeting[s]" results in pain and, as a result, "the claimant is unable to sustain full-time occupational activities of any kind at this juncture." Dr. Nimlos also noted that Ms. DeCamp's disability could become permanent.

25. In 2012, CIGNA conducted a review to determine whether Ms. DeCamp would remain eligible for ongoing LTD benefits beyond January 14, 2013.

26. By letter dated August 8, 2012, CIGNA informed Ms. DeCamp that it had determined that she remained disabled under the terms of the Plan.

27. On July 9, 2013, Ms. DeCamp underwent surgery with Dr. Michael Gofeld to have a peripheral nerve stimulator permanently implanted as a pain relief measure. Ms. DeCamp experienced improvement in her pain following the implantation of this stimulator. However, in November 2013, the stimulator ceased working and Ms. DeCamp's physicians subsequently determined that her body had rejected the implant by rapidly surrounding it with extensive scar tissue and thereby preventing it from functioning. Ms. DeCamp's pain levels again increased and she began pain-management treatment with Dr. Jennifer Lee at Swedish Medical Center.

28. In May 2014, Ms. DeCamp underwent another surgical procedure to remove the non-functional peripheral nerve stimulator and implant a spinal cord stimulator. During this period, as during her entire disability, Ms. DeCamp also pursued numerous other pain-management therapies.

29. As it had done in the past, CIGNA conducted surveillance on Ms. DeCamp twice in 2014, once for four days between April 22 and May 2, 2014 and again from August 27 to August 29, 2014.

30. The April/May 2014 surveillance showed that Ms. DeCamp did not leave her house during the first three days she was monitored. On the fourth day, she was observed attending a medical appointment. The surveillance also documented activities consistent with Ms. DeCamp's reported limitations, such as the presence of a landscaping company and a cleaning service, and the fact that Ms. DeCamp's husband was the one to retrieve the mail from the mailbox and to bring the garbage bins back to the house.

31. Over the first three days of the August surveillance, the full extent of Ms. DeCamp's activity on the first day involved an hour spent going to the swimming pool, part of her pain-management regime, followed by a doctor appointment and 20 minutes of grocery shopping. The surveillance report notes that Ms. DeCamp left the store carrying two shopping bags. (Ms. DeCamp later submitted a receipt to CIGNA showing that she had purchased the ingredients to make one pot of soup.) Reflecting her need to rest after activity, the surveillance report showed that the following day Ms. DeCamp did not leave her house. On the third and final day of surveillance, the full extent of Ms. DeCamp's activity outside of the home was repositioning a sprinkler. The August surveillance also documented activities consistent with Ms. DeCamp's reported limitations, such as the arrival of a cleaning service, the fact that Ms. DeCamp did not retrieve her mail from the mailbox, and the fact that it was Ms. DeCamp's husband who took the trash to the curb of their residence.

32. In November 2014, CIGNA sent Ms. DeCamp for a second IME, this time with Dr. Dan Gerstenblitt. Prior to the IME, Ms. DeCamp submitted her complete current medical records from Swedish Medical Center through October 2014 to CIGNA. Dr. Gerstenblitt did not review all of these records as part of his IME. These records noted, among other things, that Ms. DeCamp was

"Having visceral pain that is not covered by [recent implant]" and pain is "aggravated with standing, sitting, walking, bending, twisting."

33. In his IME report, Dr. Gerstenblitt acknowledged Ms. DeCamp's ongoing pain. However, he stated that she is self-limiting herself as a result of it. Specifically, he said that she is "basically left with a sedentary type of functional ability due to the self-imposed limitations that she has placed because of her pain." Put another way, he said "[t]he only thing limiting her is her self-imposed limitations that she has placed upon herself because of her pain levels." On the other hand, Dr. Gerstenblitt also stated that her "[r]estrictions are based on risk of harm and capacity and not on tolerance issues that she has to pain." On the physical ability assessment form, Dr. Gerstenblitt indicated that Ms. DeCamp could sit "continuously," and even work extended shifts and overtime.

34. On November 26, 2014, after paying benefits for nearly four years, CIGNA determined that Ms. DeCamp no longer met the Plan's definition of disability and thus was not entitled to payment of any additional LTD benefits beyond that date.

35. On April 23, 2015, treating physician Dr. Jillene Casey of the Swedish Medical Center noted that Ms. DeCamp is "[n]ot able to stand or walk for any length of time. Sitting for short periods of time elicits pain such that recovery is needed (i.e. laying down after prolonged sitting)." On this date, Dr. Casey also stated Ms. DeCamp was unable to work and it was unknown if she would ever be able to.

36. Ms. DeCamp's physical therapists have also thoroughly documented her persistent abdominal pain. For example, her December 2014 physical therapy records state that several times a month her pain flares to 8/10, almost always due to prolonged sitting or standing. Similarly, her April 2015 records note that

her pain is "aggravated with standing, sitting, walking, bending, twisting," and that, after a period of higher activity than normal, she was experiencing increased pain that had not subsided. In addition, Ms. DeCamp had to triple her pain medication during the period of increased activity.

37. In 2015, Ms. DeCamp contacted Dr. Nimlos, whom CIGNA had previously retained to perform an IME on Ms. DeCamp and upon whom CIGNA had relied in assessing her claim. Ms. DeCamp retained Dr. Nimlos to perform a follow-up IME. Dr. Nimlos performed a two-day IME of Ms. DeCamp, on April 29 and May 1, 2015.

38. After reviewing of all of Ms. DeCamp's extensive medical records and performing his own physical examination, Dr. Nimlos found that Ms. DeCamp "continues with unrelenting pain in spite of her efforts and those of her medical providers. The intervention so far has produced some temporary, very positive results, but that level of improvement has not lasted." Dr. Nimlos found that Ms. DeCamp's "level of pain is consistent with her report by examination and medical records and remains a level that would be seriously distracting from her ability to focus on her work." Thus, he concluded that Ms. DeCamp's "***physical capacities are still variable (good days/bad days), but remain inconsistent with substantial gainful employment***" and stated that Ms. DeCamp would be unable to work in even a sedentary job on a fulltime basis, noting that her **"*ability to work will vary from day to day*."** (Emphasis added.)

39. Ms. DeCamp submitted Dr. Nimlos's IME report to CIGNA with her appeal letter dated July 11, 2015.

40. In August 2015, CIGNA submitted Ms. DeCamp's medical records to Dr. James Butler for a second peer review. Dr. Butler conducted a paper-based review of Ms. DeCamp's medical records. In addition, he contacted Dr.

Eleanor Friele, an endometriosis specialist who he alleges informed him that she was no longer treating Ms. DeCamp. Dr. Butler then left two messages for treating physician Dr. Jennifer Lee over a two-day period, but never spoke with her.

41. Dr. Butler concluded that Ms. DeCamp "is physically functionally limited from 11/26/2014 based on the fact that she has become deconditioned because of self-limiting pain tolerance." Dr. Butler stated that her pain "is a tolerance issue and because of that she became deconditioned." He also stated that "restrictions are applied not based on tolerance but on risk of harm or lack of capacity. There is no question of being deconditioned, she has a lack of capacity now, but there is no risk of harm. She may increase her pain but it will not cause any functional damage." Dr. Butler concluded that Ms. DeCamp's work-related restrictions included the ability to occasionally reach below waist level and the ability to sit for six hours in an eight-hour day, as well as walking or standing for 15 minute intervals for up to two hours in an eight-hour day.

42. On September 15, 2015, CIGNA denied Ms. DeCamp's appeal. By letter dated March 10, 2016, Ms. DeCamp again appealed CIGNA's decision.

43. During the appeal period, medical records from treating physician Dr. Jennifer Lee of the Swedish Medical Center consistently document Ms. DeCamp's pain and the fact that it is aggravated by standing walking, sitting, and bending. Dr. Lee noted in May 2015 that, "Spinal cord stim working for neuralgia but deeper visceral pain problematic." In February 2016, Dr. Lee noted that Ms. DeCamp was still having flare ups, specifically after increased activity, and that she required continuation of the following medications: oxycodone, desipramine, tizanidine, valium suppositories, tramadol, and promethazine, as well as continued physical therapy, injections to address scar tissue, and use of spinal

cord stimulation.

44. On April 26, 2016, CIGNA submitted Ms. DeCamp's records to Dr. Behzad Emad for a peer review. Dr. Emad found that Ms. DeCamp had been "extensively treated by different providers to properly address her pain symptoms" but nonetheless, she "continued to have pain symptoms." He noted that examination findings "include restricted range of motion of the lumbar spine and left hip, tenderness over the left lower quadrant, and tenderness over the ilioinguinal and genitofemoral nerves" and that Ms. DeCamp found "pain worse with standing, sitting, walking, squatting, kneeling, bending, stooping, and crouching." Despite acknowledging the medical records documenting ongoing pain and positive physical examination findings in the pelvic area, abdomen, lower back, and left hip, and without addressing the variable levels of Ms. DeCamp's pain, Dr. Emad found that Ms. Decamp's restrictions from November 26, 2014 and onward were limited to:

- Sitting – 30 minutes at a time, total of 6 hours in an 8-hour day
- Standing and walking – combined one hour at a time, total of 2 hours in an 8-hour day
- Carrying, lifting, pushing, and pulling of 10 lbs – occasional.

45. By letter dated June 15, 2016, CIGNA denied Ms. DeCamp's final appeal, again finding that she did not meet the Plan's definition of disability, and informed Ms. Decamp that she had exhausted all administrative levels of appeal.

46. Ms. DeCamp has been diagnosed with and treated for, among other things, abdominal cutaneous nerve entrapment syndrome, endometriosis, abdominal and pelvic pain, pelvic floor dysfunction, mononeuritis, chronic pain syndrome, neuropathy, dysmenorrhea, irritable bowel syndrome, migraine headaches, trigonitis, complications of implanted device, and uterine fibroid.

47. As a result of Ms. DeCamp's medical conditions and the accompanying pain, she is extremely limited in her ability to engage in her normal daily activities. She experiences frequent flare-ups, which require extended rest and additional recovery time. Approximately 1-2 times per month, her pain is so severe that she spends the entire day lying down. Activities such as bathing, showering, washing her hair, and shaving are difficult and taxing and, as a result, Ms. DeCamp performs them on a limited basis. Ms. DeCamp dresses in loose fitting closing to avoid pressure on her abdomen. Ms. DeCamp attends frequent medical appointments, which require additional rest to recover from the activity. At times she has to cancel appointments due to the severity of her condition. At the direction of her treating physicians, Ms. DeCamp has at times had the goal of swimming multiple times a week, but is often unable to meet this goal and is sometimes unable to swim at all.

48. Ms. DeCamp's ability to do household chores is very limited by her pain. When she does attempt even limited light household work, it is often accompanied by an increase in symptoms. Her husband handles much of the housework, but Ms. DeCamp also has to rely on a cleaning service and she also frequently uses grocery and meal delivery services as a result of her condition. Her ability to cook is now limited and she often has to abandon her attempts. When she is able to cook, she relies on her husband to retrieve items from lower cabinets and help her with any heavy items. Her husband also washes heavy items and load and unloads the bottom level of the dishwasher. Ms. DeCamp attempts to do laundry, but requires her husband's assistance to move the laundry baskets from room to room, and often to load the machines as well. Her ability to engage in even this limited daily routine is inconsistent and unpredictable due to her varying pain levels.

49. Ms. DeCamp's social interactions and activities have decreased dramatically

as a result of her condition. While Ms. DeCamp still attempts to take an annual trip for her wedding anniversary, her medical condition requires her to make extensive accommodations for this trip, including building in recovery time, flying first class, increasing her pain medications, and picking lodging that can accommodate her treatment and restrictions.

50. Ms. DeCamp has gone to great lengths to address and alleviate her abdominal pain. Ms. DeCamp's treatment has included nerve blocks, a peripheral spinal nerve stimulator, a spinal cord stimulator, scar tissue injections, use of a TENS unit, desensitization exercises, extensive physical therapy, chiropractic treatment, aquatic and Qigong exercises as permitted, specialized nutrition plans, biofeedback, therapeutic massage, specialized pelvic massage, heat therapy, ice pack therapy, acupuncture, hot baths with Epsom salts, Cranial Electrotherapy Stimulation, meditation, and a lengthy history of pain medication.

51. Ms. DeCamp's pain-related medications have included gabapentin, pregabalin, amitriptyline, methadone, morphine, oxycodone, oxycontin, Percocet, Vicodin, Roxycodone, Cymbalta, acetaminophen, duloxetine, Lidoderm patch, ibuprofen, nortriptyline, tramadol, tizanidine, diazepam, promethazine, triamcinolone, replax, valium suppositories, ketamine gel, Voltaren, Urelle, HyoMax, Lidocaine patch, vitamins and supplements, and numerous hormonal medications to regulate menstruation. Although her exact regimen has varied, and Ms. DeCamp has succeeded in lowering her overall dose of opiates as her pain allows, Ms. DeCamp has consistently relied on pain medication since 2009.

52. Ms. DeCamp's abdominal pain-related medical procedures include multiple pelvic ultrasounds, multiple MRIs, CT scan, diagnostic laparoscopy with diagnostic cystoscopy, colonoscopy, scar tissue, trigger point, and cortisone

injections, IUD implant and removal, diagnostic injections to ilioinguinal and genitofemoral nerves, ultrasound-guided left ilioinguinal nerve blocks, cryoblation of the left ilioinguinal nerve, genitofemoral nerve block, peripheral nerve stimulator implantation and removal, and spinal cord stimulator implantation.

53. Ms. DeCamp's extensive medical records corroborate her ongoing disability.

54. ERISA requires that for an adverse benefit decision's appeal to constitute a full and fair review, the administrator must "not afford deference to the initial adverse benefit determination" and, where medical judgment is in play, must consult with "a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment." 29 CFR § 2560.503-1 (h)(3)(ii)-(iii).

55. CIGNA has a structural conflict of interest, in that it both funds and administers the LTD plan.

56. CIGNA has acted on its conflict of interest in several ways, including but not limited to, by relying on an IME based on incomplete medical records and by rejecting the findings of Dr. Nimlos, despite having previously retained and relied upon Dr. Nimlos.

57. Plaintiff has satisfied any requirement under the Plan and/or ERISA to exhaust her administrative remedies.

58. At all relevant times, Plaintiff has been entitled to disability benefits under the terms of the plan.

COUNT I
[Claim for Benefits Pursuant to ERISA § 502(a)(1)(B)]

59. Plaintiff incorporates Paragraphs 1 through 58 as though fully set forth herein.

60. ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), permits a plan participant to

bring a civil action to recover benefits due under the terms of a plan, to enforce rights under the terms of a plan, and/or to clarify rights to future benefits under the terms of a plan.

61. At all relevant times, Plaintiff has been entitled to LTD benefits under the Plan. By denying Plaintiff's claim for LTD benefits under the Plan, and by related acts and omissions, Defendant has violated, and continues to violate, Plaintiff's right to LTD benefits.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant the following relief:

A. Declare that Defendant violated the terms of the Plan by terminating Plaintiff's claim for LTD benefits;

B. Order Defendant to pay LTD benefits to Plaintiff pursuant to the terms of the Plan from November 26, 2014 through the date judgment is entered herein; together with prejudgment interest on each and every such monthly payment through the date judgment is entered herein;

C. Declare Plaintiff's right to reinstatement into the Plan and her right to receive future LTD benefit payments under the terms of the LTD Plan for as long as she remains disabled under the Plan's terms;

D. Award Plaintiff reasonable attorneys' fees and costs of suit incurred herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g);

E. Provide such other relief as the Court deems equitable and just.

Dated: April 7, 2017

Respectfully submitted,
SPRINGER AYENI,
A PROFESSIONAL LAW CORPORATION

/s/ Claire Kennedy-Wilkins
Claire Kennedy-Wilkins